HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.69 of 2006

Pramod Kumar Sharma
S/o Sri Nakli Ram Sharma
C/o Anil Kumar Rathor
R/o 388-B Govindpuri
P.S. Jwalapur, Haridwar ..... Applicant

Versus

1. State of Uttaranchal
2. Goel Associates through
   Its Proprietor Smt. Sushma Goel
   R/o A-79, Shivalik Nagar BHEL
   P.S. Ranipur, Haridwar .....Respondents

Dated :- 10.03.2006

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for quashing the proceedings in complaint case No.830/2004 pending before the Judicial Magistrate, Haridwar under section 138 of the Negotiable Instrument Act.

2) Brief facts of the case are that on 10.9.2004 the respondent No.2 filed a complaint before the Judicial Magistrate, Haridwar under section 138 of the Negotiable Instrument Act alleging therein that the applicant took loan from the respondent No.2-Goel Associates to tune of Rs.30,000/-. On returning the said amount, the applicant gave a cheque bearing No.870315 dated 22.7.2004 amounting to Rs.30,000/-. When the complainant submitted the said cheque before the bank, but the cheque was dishonoured by the bank due to insufficiency of funds. Thereafter, on 12.8.2004 the complainant served notice to the applicant required under section 138 of the Negotiable Instrument Act.

3) Thereafter, the learned Magistrate took cognizance against the applicant vide order dated 28.10.2004. Feeling aggrieved by this, the applicant preferred the present petition. Feeling aggrieved by the same, the applicant preferred a revision before the Sessions Judge and the same was dismissed.

4) I have heard Sri Pankaj Miglani learned counsel for the applicant and Sri G.S. Sandhu learned A.G.A.

5) The learned Magistrate has mentioned in the order that a cheque bearing No.870313 of Rs. 15,000/- singed by the applicant was bounced. Whereas it has come in the evidence that a cheque bearing No.870315 was bounced. There is totally inconsistent theory which has been mentioned in the cognizance order. The Magistrate has not applied its mind.

6) In view of the above, the cognizance order dated 28.10.2004 passed by the Judicial Magistrate,Ist Haridwar in case No.830/2004 is liable to be set aside.

7) Therefore, the cognizance order is set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

8) The petition is disposed of accordingly.

(J. C. S. RAWAT, J.)

Dated 10.03.2006

LSR